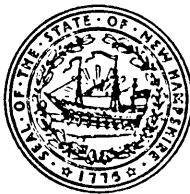


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January 4, 1984

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Mr. Lloyd M. Price, Commissioner
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Re: Applicability of RSA 82:2, As Amended
By Ch. 469:62, Laws 1983

Dear Mr. Price:

You have asked whether the railroad and telephone utility tax imposed by RSA 82:2, as amended in the 1983 legislative session to expand the types of property subject to tax, may be applied to the April 1, 1983 through March 31, 1984 tax year. It is our opinion that the tax as amended may be so applied.

RSA 82:2, imposing a tax on the actual value of the utility's property and estate, was amended by Ch. 469:62, Laws 1983 to remove certain exclusions and limitations on the types of property subject to the tax. This amendment to RSA 82:2 became effective on July 1, 1983. Ch. 469:156, IX, Laws 1983. Thus, on July 1, 1983, the tax became applicable to additional types of property; principally, the utility's personal property and property not used in the utility's ordinary business. By the terms of RSA 82:2, the tax is imposed on the value of the utility's property "as of April 1 of each year," and tax bills are normally sent out in November with payment due in December of each year. It is our opinion that the amended definition which took effect on July 1, 1983 may properly be applied in the April 1, 1983 through March 31, 1984 tax year to property owned as of April 1, 1983 for several reasons.



First, it has been established that the legislature may properly enact a tax which is to be measured by events occurring prior to the effective date of the tax. In Estate of Kennett, 115 N.H. 50 (1975), the New Hampshire Supreme Court approved the enactment of the business profits tax, effective on April 22, 1970, to "apply to gross business profits earned since January 1, 1970." Second, the legislature clearly intended the amended definition to apply to tax payments made during the present tax year. The amended definition itself took effect on July 1, 1983, shortly after commencement of the present tax year and prior to commencement of the statutory procedure for determining tax assessments and issuing tax bills. Anticipated increases in the receipts attributable to the amendment were included in this fiscal year's budget. Finally, the simultaneous establishment of a procedure for estimated payments was specifically made applicable to "returns and taxes due on account of taxable periods beginning after April 1, 1983." Ch. 469:156, VI, Laws 1983 (emphasis added). It is evident that when the legislature intended to enact an amendment to the same statute to take effect in a subsequent taxable period, it made specific provision for a delayed effective date. The legislature chose not to make a similar provision for the amendment to RSA 82:2, instead giving it immediate effect on July 1, 1983, one day after its approval on June 30, 1983. It is reasonable to infer that the legislature intended to apply the amended definition to the present taxable period.

For these reasons, the tax as amended by Ch. 469:62, Laws 1983 may be imposed with respect to the present taxable period on property owned as of April 1, 1983.

Very truly yours,

Betsy S. Westgate

Betsy S. Westgate
Assistant Attorney General
Division of Legal Counsel

BSW:ab
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